

REMARKS/ARGUMENTS

Claims 1-37 are pending in the present application. The Examiner has rejected claims 1-37. Applicant respectfully requests reconsideration of pending claims 1-37.

The Examiner states, "THIS ACTION IS MADE FINAL" and, in the Office Action Summary, indicates "Status" as "This action is FINAL." However, Applicant notes MPEP § 706.07(a) states, in part, as follows: "Under present practice, second or any subsequent actions on the merits shall be final, except where the examiner introduces a new ground of rejection that is neither necessitated by applicant's amendment of the claims, nor based on information submitted in an information disclosure statement filed during the period set forth in 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17(p)." Applicant notes the Examiner has introduced new issues not raised in previous Office actions. Applicant submits the new issues raised by the Examiner were not necessitated by Applicant's amendment of the claims, nor based on information submitted in an information disclosure statement. Thus, Applicant respectfully requests the Examiner withdraw the finality of the present Office action and issue a non-final Office action or Notice of Allowability.

The Examiner states, "Claims 34-37 were newly added claims in an amendment filed 02/21/2008 which were not provided with the original claims, and were not in the brief summary commensurate with the claimed invention." The Examiner requires a supplemental oath or declaration under 37 CFR 1.67. The Examiner refers to MPEP §§ 602.01, 602.02, 603, and 37 CFR 1.67(b). Applicant respectfully disagrees.

Applicant notes the Examiner cites 37 CFR 1.67(b), which states as follows:

A supplemental oath or declaration meeting the requirements of § 1.63 must be filed when a claim is presented for matter originally shown or described but not substantially embraced in the statement of invention or claims originally presented or when an oath or declaration submitted in accordance with § 1.53(f) after the filing of the specification and any required drawings specifically and improperly refers to an amendment which includes new matter. No new matter may be introduced into a nonprovisional application after its filing date even if a supplemental oath or declaration is filed. In proper situations, the oath or declaration here required may be made on information and belief by an applicant other than the inventor.

Applicant submits claims 34-37 introduced no new matter. While the Examiner states, "Claims 34-37 were newly added claims in an amendment filed 02/21/2008...", Applicant notes the Examiner examined those claims and issued an Office action on 04/25/2008, in which the Examiner not only did not find those claims to be "presented for matter originally shown or described but not substantially

embraced in the statement of invention or claims originally presented or when an oath or declaration submitted in accordance with § 1.53(f) after the filing of the specification and any required drawings specifically and improperly refers to an amendment which includes new matter," but also alleged obviousness-type prior art rejections against those claims under 35 U.S.C. § 103(a), citing the same prior art references which the Examiner applied to all of the other claims in the application. Applicant notes the Examiner expressly alleged that "It would have been obvious to one of ordinary skill in the art at the time the invention was made...." By so stating in the course of bringing a § 103(a) rejection, not only did the Examiner expressly characterize the subject matter of claims 34-37 as "the invention," contradicting the Examiner's present contention that claims 34-37 recite matter "not substantially embraced in the statement of invention or claims originally presented," but also the Examiner characterized all of the subject matter of both claims 1-33 and claims 34-37 as being "obvious to one of ordinary skill in the art at the time the invention was made." While Applicant respectfully disagrees with the assertions and characterizations made by the Examiner, Applicant submits the Examiner's actions already of record in the present application cannot be reconciled with the Examiner's assertions upon which the Examiner's requirement of a supplemental oath or declaration is based. Thus, Applicant submits claims 34-37 cannot properly be deemed to be claims "presented for matter originally shown or described but not substantially embraced in the statement of invention or claims originally presented or when an oath or declaration submitted in accordance with § 1.53(f) after the filing of the specification and any required drawings specifically and improperly refers to an amendment which includes new matter." Therefore, Applicant respectfully requests the requirement for a supplemental oath or declaration be withdrawn as improper.

The Examiner has objected to the specification because there is no brief summary of the invention. The Examiner states a brief summary should be provided commensurate, and consistent with the claims. The Examiner refers to MPEP § 608.01(d) and 37 CFR 1.73. Applicant respectfully disagrees.

Applicant notes MPEP § 608.01(a), particularly Form Paragraph 6.01, entitled "Arrangement of the Sections of the Specification in a Utility Application," which states, "The following guidelines illustrate the preferred layout for the specification of a utility application. These guidelines are suggested for the applicant's use." Applicant submits that such guidelines are merely suggested, but not required. Applicant submits that 37 CFR § 1.73 merely states that a "brief summary of the

invention...should precede the detailed description” and includes the adverb clause, “when set forth,” which Applicant submits indicates that a brief summary of the invention need not be set forth in a utility application. Therefore, Applicant submits that the Examiner’s objection as to the brief “Summary of the Invention” is obviated.

The Examiner has rejected claims 1, 17, and 25 under 35 U.S.C. 112, second paragraph, alleging it to be indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The Examiner states, "Claims 1, 17, and 25 recite the limitation 'queuing the identity' in lines 6, 9, and 6 respectively." The Examiner alleges insufficient antecedent basis for that limitation in the claims. The Examiner states, "This limitation appears to rely on 'each of the plurality of virtual connection is identified by an identifier' in lines 4-5, 7-8, and 4-5 respectively, but there may be a difference between 'identifier' and 'identity.'" Applicant has amended claims 1, 17, and 25. Applicant submits no new matter has been added. Applicant submits the amendments are merely cosmetic and do not change the scope of claims 1, 17, and 25. Thus, Applicant submits the Examiner's objections to claims 1, 17, and 25 have been obviated.

The Examiner has rejected claims 1-37 under 35 U.S.C. §103(a) as allegedly being unpatentable over Sorinsuo et al. (U.S. Patent No. 6,148,001) in view of Shimojo (U.S. Patent No. 6,934,296)." Applicant respectfully disagrees.

Regarding claims 1, 10, 17, and 25, Applicant notes the Examiner states, in the Examiner's Response to Arguments, as follows:

Applicant's arguments, see page 14, paragraph 4, with respect to rejection of claims 1, 10, 17, and 25 under 35 USC 103, have been fully considered but they are not persuasive. Applicant states Examiner may not teach" ... when data that constitute a complete packet are buffered in a corresponding buffer." Applicant appears not to recognize that Examiner cited Sorinsuo for maintaining a state of whether a complete packet is buffered (column 9, lines 14-16), which is what provides a reasonable expectation of success in combination with Shimojo. Further, Applicant states Examiner may not give any suggestion or motivation to combine. The motivation to combine was given in the rejection, which is to associate the VCI with various connection parameters, and to output the data accordingly. Therefore, the rejections are maintained.

Applicant submits the mere teaching of "The state is maintained for each incoming VCC, which indicates whether the buffer of that VCC contains one or more complete AAL-5 packet" of col. 9, lines 14-16, of the Sorinsuo reference does not disclose or suggest "queuing the identity of a virtual connection in a queue when cells that constitute a complete packet are buffered in a corresponding cell

buffer." Moreover, Applicant disagrees with the Examiner's assertion that "Shimojo, which is in the same field of endeavor, teaches queuing a VCI for use in a buffer pointer management unit that associates the VCI with various connection parameters, and for outputting the data accordingly" is disclosed in "(columns 17 and 18, lines 19-31 and 49-57 respectively)" of the Shimojo reference. Moreover, Applicant submits even if such assertion were true, combining such assertion with the purported teachings of the Sorinsuo reference would not yield "queuing the identity of a virtual connection in a queue when cells that constitute a complete packet are buffered in a corresponding cell buffer." Therefore, Applicant submits claims 1, 10, 17, and 25 are in condition for allowance.

As Applicant stated in response to the previous Office action, regarding claims 1, 10, 17 and 25, Applicant submits the cited portions of the cited references do not render obvious the subject matter of claims 1, 10, 17, and 25. As an example, Applicant submits the cited portions of the cited references do not disclose or suggest "queuing the identity of a virtual connection in a queue when data that constitute a complete packet are buffered in a corresponding buffer." While the Examiner cites "(columns 17 and 18, lines 19-31 and 49-57 respectively)" of the Shimojo reference as allegedly disclosing "queuing a VCI for use in a buffer pointer management unit that associates the VCI with various connection parameters, and for outputting the data accordingly," Applicant notes the Examiner does not allege such portions of the Shimojo reference as teaching, for example, "...when data that constitute a complete packet are buffered in a corresponding buffer." Rather, the Examiner alleges "It would have been obvious to one of ordinary skill in the art at the time the invention was made to queue the identity for when data that constitute a complete packet is [sic] buffered to associate the VCI with various connection parameters, and to output the data accordingly." However, Applicant notes MPEP § 2143 states, in part, as follows:

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations.

Applicant submits the Examiner merely alleges "It would have been obvious to one of ordinary skill in the art...", but doesn't appear to state any "suggestion or motivation...to modify the reference or to combine reference teachings." Moreover, Applicant sees no evidence that the Examiner has determined any "reasonable expectation of success." Also, Applicant does not see evidence of "the prior art reference (or references when combined)...[teaching or suggesting] all the claim limitations."

In accordance with MPEP § 2143, Applicant submits the Examiner has not made a *prima facie* showing of unpatentability as to the subject matter of claims 1, 10, 17, and 25. Thus, Applicant submits the cited portions of the cited reference fail to render unpatentable the subject matter of claims 1, 10, 17, and 25.

Further regarding claims 1, 10, 17, and 25, Applicant notes the Examiner states, in the Examiner's Response to Arguments, as follows:

Applicant's arguments, see page 15, paragraph 2, with respect to rejection of claims 1, 10, 17, and 25 under 35 USC 103, have been fully considered but they are not persuasive. Applicant states Examiner may not teach "prioritization." The cited portion of Sorinsuo teaches obtaining prioritization information for the merged virtual connection by teaching certain packets may dropped, buffered ordinarily, or buffered in a bypass queue (columns 9 and 9-10, lines 17-32 and 64-4 respectively), which is the same concept as prioritization. Therefore, the rejections are maintained.

Applicant submits claims 1, 10, 17, and 25 do not claim "prioritization" as a mere "concept." Rather, Applicant submits "various priority options including the treatment of OAM cells" fails to disclose or suggest "obtaining prioritization information for the merged virtual connection." Thus, Applicant submits claims 1, 10, 17, and 25 are in condition for allowance.

As Applicant stated in response to the previous Office action, as another example, Applicant submits the cited portion of the cited references fail to disclose "obtaining prioritization information for the merged virtual connection." While the Examiner cites "(columns 9-10, lines 64-4) of the Sorinsuo reference, Applicant submits the Examiner does not show how the Examiner's allegation of "Sorinsuo further teaches various priority options including the treatment of OAM cells" supposedly justifies the conclusion "i.e., obtaining prioritization information." Applicant notes the portion of the Sorinsuo reference cited by the Examiner appears not to even mention "prioritization."

Further regarding claims 1, 10, 17, and 25, Applicant notes the Examiner states, in the Examiner's Response to Arguments, as follows:

Applicant's arguments, see page 15, paragraph 3, with respect to rejection of claims 1, 10, 17, and 25 under 35 USC 103, have been fully considered but they are not persuasive. Applicant states Examiner may not teach "a merged identifier" by citing figure 9, item 960, X. Sorinsuo was cited to be considered as a whole, for example referring also to figure 9, item 930, where "X" not only refers to the letter "X," but to "VCCout" where one of ordinary skill in the art would understand that "X" represents a merged identifier. The cited portions should be considered in context and as a *whole* to be fully understood. Therefore, the rejections are maintained.

Applicant does not find any teaching of "X" disclosing a "merged identifier" either in Fig. 9 or in the description of Fig. 9 found in column 9 of the Sorinsuo reference. Thus, Applicant submits, even considering the cited portions in context and as a whole, Applicant submits the cited portions of the cited references fail to render the teaching asserted by the Examiner.

As Applicant stated in response to the previous Office action, as yet another example, Applicant submits the cited portion of the cited reference fails to disclose "generating a data stream for the merged virtual connection based on the prioritization information and virtual connection identities stored in the queue, wherein the merged virtual connection is identified by a merged identifier, wherein each unit of data in the data stream includes the merged identifier." While the Examiner cites "(figure 9, item 960, X)" as allegedly disclosing "the merged identifier," Applicant can see no teaching as to a mere representation of the letter "X" disclosing a "merged identifier." Thus, Applicant submits the cited portion of the cited reference fails to disclose or suggest the claimed subject matter. While Applicant provides examples from claim 1, Applicant notes the Examiner has not addressed claims 10 or 17 individually, so Applicant submits claims 10 and 17 are also not shown to be unpatentable. Therefore, Applicant submits claims 1, 10, 17 and 25 are in condition for allowance.

Regarding claim 25, Applicant notes the Examiner states, in the Examiner's Response to Arguments, as follows:

Applicant's arguments, see page 15, paragraph 4, with respect to rejection of claim 25 under 35 USC 103, have been fully considered but they are not persuasive. Applicant states Examiner may not teach "different classes receive priority for different ones of the intervals" because the cited portions of Shimojo may be in different contexts. The Shimojo reference was used to show class-prioritized dequeuing in intervals (columns 24 and 25, lines 39-46 and 3-8). They are in the same context of class-prioritized buffers Ba1 and Ba2. Therefore, the rejection is maintained.

While the Examiner alleges "The Shimojo reference was used to show class-prioritized dequeuing in intervals (columns 24 and 25, lines 39-46 and 3-8)" and "They are in the same context of class-prioritize buffers Ba1 and Ba2," Applicant submits those portions of the cited reference do not disclose all of the teachings alleged by the Examiner. As an example, Applicant submits such portions do not disclose "...where different classes receive priority for different ones of the intervals." For example, Applicant doesn't see any teaching as to Ba1 in reference to "different ones of the intervals." Thus, Applicant submits claim 25 is in condition for allowance.

As Applicant stated in response to the previous Office action, regarding claim 25, Applicant submits the cited portions of the cited reference fail to disclose the subject matter of claim 25. Applicant has already cited examples from claim 1 above as to why the subject matter of claim 1 is not unpatentable, and the Examiner brought a combined rejection of claims 1, 10, 17 and 25, so Applicant submits the Examiner has not shown how claim 25 would be unpatentable. As another example, Applicant submits the cited portions of the cited reference do not teach or suggest "...wherein dequeuing of data is performed in intervals, where different classes receive priority for different ones of the intervals." While the Examiner cites "(column 24, lines 39-46)" of the Sorinsuo reference as allegedly disclosing such feature, Applicant submits Applicant sees no teaching as to "performed in intervals" or "for different ones of the intervals" in such portion. While the Examiner cites "(column 25, lines 3-8)" as allegedly disclosing "performed in intervals," Applicant sees no teaching in "(column 24, lines 39-46)" as to "where different classes receive priority for different ones of the intervals" in the context of the supposed "intervals" of "(column 25, lines 3-8)." Thus, Applicant submits the cited portions of the cited reference fail to disclose or suggest the subject matter of claim 25. Therefore, Applicant submits claim 25 is in condition for allowance.

Regarding claims 2, 18, and 26, Applicant notes the Examiner states, in the Examiner's Response to Arguments, as follows:

Applicant's arguments, see page 16, paragraph 2, with respect to rejection of claims 2, 18, and 26 under 35 USC 103, have been fully considered but they are not persuasive. Applicant states Examiner may not teach "based on the prioritization information." The cited portion of Sorinsuo teaches obtaining prioritization information for the merged virtual connection by teaching certain packets may dropped, buffered ordinarily, or buffered in a bypass queue (columns 9 and 9-10, lines 17-32 and 64-4 respectively), which is the same concept as prioritization. Therefore, the rejections are maintained.

Applicant submits claims 2, 18, and 26 do not claim "prioritization" as a "concept." Rather, Applicant notes the Examiner alleges "Packets are transmitted in the order that complete packets are received including when OAM cells are buffered as ordinary cells, i.e. based on the prioritization information (column 9, lines 57-64)." Yet, when Applicant disputes that, the Examiner cites "(column 9-10, lines 64-4)," which the Examiner cited with respect to "obtaining prioritization information." Applicant submits the mere "concept" of "prioritization" does not disclose the subject matter recited in claims 2, 18, and 26. Therefore, Applicant submits claims 2, 18, and 26 are in condition for allowance.

As Applicant stated in response to the previous Office action, regarding claims 2, 18 and 26, Applicant submits the cited portions of the cited references fail to disclose or suggest the subject matter of claims 2, 18, and 26. As an example, Applicant submits the cited portions of the cited references fail to disclose or suggest "wherein generating the data stream for the merged virtual connection further comprises dequeuing data from the plurality of buffers to produce the data stream, wherein dequeuing of the data is based on the prioritization information." While the Examiner cites "column 9, lines 57-64" as allegedly disclosing "...including when OAM cells are buffered as ordinary cells, i.e., based on the prioritization information," Applicant sees no teaching as to "when OAM cells are buffered as ordinary cells" allegedly leading to the Examiner's apparent conclusion "i.e., based on the prioritization information." Thus, Applicant submits the cited portions of the cited references fail to disclose or suggest the subject matter of claims 2, 18, and 26. Therefore, Applicant submits claims 2, 18 and 26 are in condition for allowance.

Regarding claims 3, 11, 19, and 27, Applicant notes the Examiner states, in the Examiner's Response to Arguments, as follows:

Applicant's arguments, see page 16, paragraph 3, with respect to rejection of claims 3, 11, 19, and 27 under 35 USC 103, have been fully considered but they are not persuasive. Applicant states Examiner may not teach "the prioritization information includes class prioritization information." Sorinsuo teaches priorities (column 10, lines 30-31) and classes (column 7, lines 42-50). Also recognize Sorinsuo was combined with Shimojo for these limitations, i.e., applicant's arguments are incomplete because they are based solely on Sorinsuo. Therefore, the rejections are maintained.

Applicant submits "Sorinsuo teaches priorities (column 10, lines 30-31) and classes (column 7, lines 42-50)" is inadequate to allege teaching or suggestion as to, for example, "wherein each of the plurality of virtual connections is included in a class of a plurality of classes, wherein the queue includes a plurality of queues, wherein each of the plurality of queues corresponds to a class of the plurality of classes, wherein queuing the identity of a virtual connection further comprises queuing the identity of the virtual connection into a corresponding one of the plurality of queues based on class of the virtual connection, wherein the prioritization information includes class prioritization information." Thus, Applicant submits claims 3, 11, 19, and 27 are in condition for allowance.

As Applicant stated in response to the previous Office action, regarding claims 3, 11, 19 and 27, Applicant submits the cited portions of the cited references fail to disclose or suggest the subject matter of claims 3, 11, 19, and 27. As an example, Applicant submits the cited portions of the cited

references fail to disclose or suggest "wherein each of the plurality of virtual connections is included in a class of a plurality of classes, wherein the queue includes a plurality of queues, wherein each of the plurality of queues corresponds to a class of the plurality of classes, wherein queuing the identity of a virtual connection further comprises queuing the identity of the virtual connection into a corresponding one of the plurality of queues based on class of the virtual connection, wherein the prioritization information includes class prioritization information." While the Examiner cites "(column 10, lines 30-31)" as allegedly disclosing "scheduling can support priorities," Applicant submits "scheduling can support priorities" does not teach or suggest "...wherein the prioritization information includes class prioritization information." Thus, Applicant submits the Examiner has not made a *prima facie* showing of obviousness. Therefore, Applicant submits claims 3, 11, 19 and 27 are in condition for allowance.

Regarding claims 4, 12, 20, and 28, Applicant notes the Examiner states, in the Examiner's Response to Arguments, as follows:

Applicant's arguments, see page 17, paragraph 2, with respect to rejection of claims 4, 12, 20, and 28 under 35 USC 103, have been fully considered but they are not persuasive. Applicant states Examiner may not teach "linked list". The cited portions of Sorinsuo teach a list, and Shimojo teaches a chain of buffer pointers which is the same concept as a linked list. Therefore, the rejections are maintained.

While the Examiner states, "Shimojo teaches a chain of buffer pointers...", Applicant notes the Examiner appears to have alleged "buffers" in Shimojo as allegedly teaching "queues." In that context, Applicant submits Shimojo's purported "chain of buffer pointers" cannot disclose, for example, "wherein each of the plurality of queues is a linked list..." Thus, Applicant submits claims 4, 12, 20, and 28 are in condition for allowance.

As Applicant stated in response to the previous Office action, regarding claims 4, 12, 20 and 28, Applicant submits the cited portions of the cited references fail to disclose or suggest the subject matter of claims 4, 12, 20 and 28. As an example, Applicant submits the cited portions of the cited references fail to disclose or suggest "wherein each of the plurality of queues is a linked list, wherein queuing the identity of a virtual connection further comprises appending the identity of the virtual connection to a tail of a corresponding one of the linked lists based on class of the virtual connection." While the Examiner cites "(column 18, lines 37-38)" as allegedly disclosing "each of the queues is implemented using a chain of buffer pointers," Applicant notes the cited portion of the cited reference

merely states "Each one of the cell groups and the idle buffer pointer chain 251 is provided in the form of a chain of buffer pointers...." Applicant sees no mention of "linked list" to support the Examiner's apparent conclusion of "i.e., linked list." Therefore, Applicant submits claims 4, 12, 20 and 28 are in condition for allowance.

Regarding claims 5, 13, 21, and 29, Applicant notes the Examiner states, in the Examiner's Response to Arguments, as follows:

Applicant's arguments, see page 17, paragraph 3, with respect to rejection of claims 5, 13, 21, and 29 under 35 USC 103, have been fully considered but they are not persuasive. Applicant states Examiner may not teach "prioritization." The cited portion of Sorinsuo teaches obtaining prioritization information for the merged virtual connection by teaching certain packets may dropped, buffered ordinarily, or buffered in a bypass queue (columns 9 and 9-10, lines 17-32 and 64-4 respectively), which is the same concept as prioritization. Therefore, the rejections are maintained.

Applicant submits claims 5, 13, 21, and 29 do not claim "prioritization" as a "concept." Rather, Applicant submits the cited portions of the cited reference do not appear to disclose, for example, "wherein the prioritization information allocates available bandwidth on the merged virtual connection based on class." Thus, Applicant submits claims 5, 13, 21, and 29 are in condition for allowance.

As Applicant stated in response to the previous Office action, regarding claims 5, 13, 21 and 29, Applicant submits the cited portions of the cited references fail to disclose or suggest the subject matter of claims 5, 13, 21 and 29. As an example, Applicant submits the cited portions of the cited references fail to disclose or suggest "wherein the prioritization information allocates available bandwidth on the merged virtual connection based on class." While the Examiner cites "(column 7, lines 42-50)," Applicant sees no mention of "prioritization." Therefore, Applicant submits claims 5, 13, 21 and 29 are in condition for allowance.

Regarding claims 6, 22, and 30, Applicant notes the Examiner states, in the Examiner's Response to Arguments, as follows:

Applicant's arguments, see page 17, paragraph 4, with respect to rejection of claims 6, 22, and 30 under 35 USC 103, have been fully considered but they are not persuasive. Applicant states Examiner may not teach "a prioritization table that stores an accessing sequence for the plurality of queues." The cited portion of Sorinsuo teaches a buffer state list including priorities, i.e. a prioritization table, using scheduling such as round-robin, fair, weighted, prioritized, etc. for the buffers/queues (column 10, lines 22-42). Therefore, the rejections are maintained.

Applicant submits the cited portion of the cited reference appears to refer to a "buffer state list" only in the context of non-prioritized operation. Applicant submits the teachings of the cited portion of the cited reference that pertain to "priorities" appear not to mention a "buffer state list." Thus, Applicant submits the Examiner's assertions appear not to be supported by the cited portions of the cited reference. Therefore, Applicant submits claims 6, 22, and 30 are in condition for allowance.

As Applicant stated in response to the previous Office action, regarding claims 6, 22 and 30, Applicant submits the cited portions of the cited references fail to disclose or suggest the subject matter of claims 6, 22 and 30. As an example, Applicant submits the cited portions of the cited references fail to disclose or suggest "wherein obtaining prioritization information further comprises referencing a prioritization table that stores an accessing sequence for the plurality of queues." While the Examiner cites "(e.g., scheduler supporting priorities, see col. 10, lines 22-42)," Applicant sees no allegation by the Examiner of any element of the cited portion of the cited reference as purportedly disclosing or suggesting "a prioritization table that stores an accessing sequences for the plurality of queues." Thus, Applicant submits the Examiner has not made a *prima facie* showing of obviousness. Therefore, Applicant submits claims 6, 22 and 30 are in condition for allowance.

As Applicant stated in response to the previous Office action, regarding claims 7, 23 and 31, Applicant submits the cited portions of the cited references fail to disclose or suggest the subject matter of claims 7, 23 and 31. Applicant has submitted arguments for the allowability of claims from which claims 7, 23, and 31 depends. Therefore, Applicant submits claims 7, 23 and 31 are also in condition for allowance.

Regarding claims 8, 24, and 32, Applicant notes the Examiner states, in the Examiner's Response to Arguments, as follows:

Applicant's arguments, see page 18, paragraph 2, with respect to rejection of claims 8, 24, and 32 under 35 USC 103, have been fully considered but they are not persuasive. Applicant states Examiner may not teach "determining that data that constitute a complete packet are buffered." The rejection should be read in the full context, including the claim from which it depends. The cited portions include an end of message indication that indicates a final cell for the complete packet, and maintaining a state that indicates a complete packet is received (column 9, lines 7-16). Therefore, the rejection is maintained.

As Applicant stated in response to the previous Office action, regarding claims 8, 24 and 32, Applicant submits the cited portions of the cited references fail to disclose or suggest the subject matter

of claims 8, 24 and 32. As an example, Applicant submits the cited portions of the cited references fail to disclose or suggest "wherein determining that data that constitute a complete packet are buffered further comprises detecting an end of message indication that indicates a final unit of data for the complete packet." While the Examiner cites "(e.g., see col. 9, lines 7-8)," Applicant does not see teaching in such portion as to "determining that data that constitute a complete packet are buffered." Therefore, Applicant submits claims 8, 24 and 32 are in condition for allowance.

Regarding claims 9 and 33, Applicant notes the Examiner states, in the Examiner's Response to Arguments, as follows:

Applicant's arguments, see page 18, paragraph 3, with respect to rejection of claims 9 and 33 under 35 USC 103, have been fully considered but they are not persuasive. Applicant states Examiner may not teach "combining the data stream for the merged virtual connection with a data stream corresponding to an additional virtual connection." Examiner not only cited figure 9, item 934, as applicant states, but also cited column 9, lines 39-51 in the rejection to provide a complete explanation. The argument appears incomplete. Therefore, the rejection is maintained.

Even in "column 9, lines 39-51," as cited by the Examiner, Applicant sees no teaching, for example, of "...by combining the data stream for the merged virtual connection with a data stream corresponding to an additional virtual connection...." Thus, Applicant submits claims 9 and 33 are in condition for allowance.

As Applicant stated in response to the previous Office action, regarding claims 9 and 33, Applicant submits the cited portions of the cited references fail to disclose or suggest the subject matter of claims 9 and 33. As an example, Applicant submits the cited portions of the cited references fail to disclose or suggest "generating a data stream for a port by combining the data stream for the merged virtual connection with a data stream corresponding to an additional virtual connection, wherein the identifier corresponding to the additional virtual connection is different than the merged identifier." While the Examiner cites "(figure 9, item 934, VCCin/VCCout)," Applicant submits such portion does not appear to disclose "combining the data stream for the merged virtual connection with a data stream corresponding to an additional virtual connection." Thus, Applicant submits the Examiner has not made a *prima facie* showing of obviousness. Therefore, Applicant submits claims 9 and 33 are in condition for allowance.

Regarding claim 14, Applicant notes the Examiner states, in the Examiner's Response to Arguments, as follows:

Applicant's arguments, see page 18, paragraph 4, with respect to rejection of claim 14 under 35 USC 103, have been fully considered but they are not persuasive. Applicant states Examiner may not teach "the prioritization information causes ... " Although the argument only recognizes Examiner's citation of the Sorinsuo reference, the Shimojo reference was cited in combination for these limitations. The argument appears incomplete. Therefore, the rejection is maintained.

Applicant submits mere teaching of, for example, "priority control among classes" in column 24, lines 45 and 46, of the Shimojo reference does not disclose or suggest "wherein the prioritization information causes transitions between classes...." Thus, Applicant submits the purported teachings of the Shimojo reference, even if an attempt were made to combine them with the purported teachings of the Sorinsuo reference, would not yield the subject matter of claim 14. Therefore, Applicant submits claim 14 is in condition for allowance.

As Applicant stated in response to the previous Office action, regarding claim 14, Applicant submits the cited portions of the cited references fail to disclose or suggest the subject matter of claim 14. As an example, Applicant submits the cited portions of the cited references fail to disclose or suggest "wherein the prioritization information causes transitions between classes for dequeuing based on at least one of: a number of packets for a particular class included in the data stream for the merged virtual connection and a number of units of data for a particular class included in the data stream for the merged virtual connection." While the Examiner merely alleges "Sorinsuo teaches scheduling can support priorities (column 10, lines 30-31)," Applicant submits such a mere mention of "priorities" does not teach or disclose "the prioritization information causes...." Thus, Applicant submits the Examiner has not made a *prima facie* showing of obviousness. Therefore, Applicant submits claim 14 is in condition for allowance.

Regarding claims 15 and 16, Applicant notes the Examiner states, in the Examiner's Response to Arguments, as follows:

Applicant's arguments, see page 19, paragraph 2, with respect to rejection of claims 15 and 16 under 35 USC 103, have been fully considered but they are not persuasive. Applicant states Examiner may not teach "is included in an ingress (or egress) portion of a communication switch." Examiner respectfully disagrees. One of ordinary skill in the art would recognize Sorinsuo as a reasonable teaching that the controller is included in the ingress/egress portion. The rejection included an example, reiterated here, from the Sorinsuo reference which teaches "those skilled in the art will recognize that the present invention may be implemented as stand-

alone chip on the output data path, or integrated in the switch buffer management." Therefore, the rejections are maintained.

Applicant submits the cited portion of the cited reference that states, "...may be implemented as a stand-alone chip on the output data path..." teaches away from, for example, "wherein the virtual connection merging system is included in the ingress portion of a communication switch." Thus Applicant submits claim 15 is in condition for allowance.

As Applicant stated in response to the previous Office action, regarding claims 15 and 16, Applicant submits the cited portions of the cited references fail to disclose or suggest the subject matter of claims 15 and 16. As an example, Applicant submits the cited portions of the cited references fail to disclose or suggest "wherein the virtual connection merging system is included in the ingress portion of a communication switch." As another example, Applicant submits the cited portions of the cited references fail to disclose or suggest "wherein the virtual connection merging system is included in the egress portion of a communication switch." While the Examiner cites "(figure 11, item 1120; column 10, lines 13-15)" and alleges "which is connected to the line interface having input/output ports," Applicant submits such allegation does not teach or suggest "is included in the ingress portion of a communication switch" or "is included in the egress portion of a communication switch." Therefore, Applicant submits claims 15 and 16 are in condition for allowance.

Regarding claim 34, Applicant notes the Examiner states, in the Examiner's Response to Arguments, as follows:

Applicant's arguments, see page 19, paragraph 3, with respect to rejection of claim 34 under 35 USC 103, have been fully considered but they are not persuasive. Examiner relies primarily on MPEP 2112 sections IV and V in using inherency. A rationale was provided in the rejection that every queue/buffer has a limited size, i.e. a finite amount of storage, thereby limiting the amount of information, i.e. a number of times the identity of the virtual connection, can be stored. The burden of proof is on the Applicant, not the Examiner, to provide evidence to the contrary, i.e. a queue/buffer with unlimited size. Therefore, the rejection is maintained.

Applicant submits claim 34 does not recite "a queue/buffer with unlimited size." Therefore, Applicant does not present arguments with respect to such feature. Rather, Applicant has presented argument based on case law pertaining to inherency. Applicant submits the Examiner mischaracterizes such arguments as being based "primarily on MPEP 2112 sections IV and V." Accordingly, Applicant submits the Examiner does not appear to have fully considered Applicant's previously presented arguments. Thus, Applicant submits claim 34 is in condition for allowance.

As Applicant stated in response to the previous Office action, regarding claim 34, Applicant submits the cited portions of the cited references fail to disclose or suggest the subject matter of claim 34. As an example, Applicant submits the cited portions of the cited references fail to disclose or suggest "limiting a number of times the identity of the virtual connection may be queued in the queue." Applicant notes the Examiner states "Shimojo inherently teaches...." While the Examiner asserts a rejection based on inherency, Applicant submits that the teachings of the cited reference fail to establish inherency in accordance with existing law. For example, Applicant submits that the Examiner has failed to establish that the public gained the benefit of the subject matter recited in claim 34 from the teachings of the cited reference. *Schering Corp. v. Geneva Pharmaceuticals*, 339 F.3d 1373 (Fed. Cir. 2003). As another example, Applicant submits that the Examiner has failed to establish that the subject matter recited in claim 34 is present in the teachings of the cited reference. *Mentor v. Medical Device Alliance*, 244 F.3d 1365 (Fed. Cir. 2001); *Scaltech v. Retec/Tetra*, 178 F.3d 1378 (Fed. Cir. 1999). Thus, Applicant submits that the subject matter recited in claim 34 cannot be considered to be inherent in the teachings of the cited reference. Accordingly, Applicant submits the Examiner has failed to satisfy the burden of proof required for asserting a rejection based on inherency. Therefore, Applicant submits that the Examiner has not shown claim 34 to be anticipated or rendered obvious by the cited reference. Consequently, Applicant submits claim 34 is in condition for allowance.

Regarding claim 35, Applicant notes the Examiner states, in the Examiner's Response to Arguments, as follows:

Applicant's arguments, see page 20, paragraph 1, with respect to rejection of claim 35 under 35 USC 103, have been fully considered but they are not persuasive. Applicant argues Examiner relies only upon Sorinsuo to reject the limitations, however Shimojo was used in combination. Argument appears incomplete. Therefore, the rejection is maintained.

Applicant submits the purported teachings of both cited references, even if an attempt were made to combine them, still do not disclose or suggest the subject matter of claim 35. For example, Applicant submits such purported teachings still do not disclose or suggest "...during a particular interval for which it has priority...." Thus, Applicant submits claim 35 is in condition for allowance.

As Applicant stated in response to the previous Office action, regarding claim 35, Applicant submits the cited portions of the cited references fail to disclose or suggest the subject matter of claim 35. As an example, Applicant submits the cited portions of the cited references fail to disclose or

suggest "when a first class of the plurality of classes does not have data to transmit during a particular interval for which it has priority, reverting the priority for the particular interval to a highest priority class." While the Examiner merely states "Sorinsuo teaches scheduling can support priorities (column 10, lines 30-31)," Applicant submits such mere mention of priorities does not disclose or suggest the subject matter recited in claim 35. Thus, Applicant submits the Examiner has not made a *prima facie* showing of obviousness. Therefore, Applicant submits claim 35 is in condition for allowance.

Regarding claim 36, Applicant notes the Examiner states, in the Examiner's Response to Arguments, as follows:

Applicant's arguments, see page 20, paragraph 2, with respect to rejection of claim 36 under 35 USC 103, have been fully considered but they are not persuasive. Applicant states Examiner may not teach "class prioritization information". The rejections should be read in context and as a whole including the claims from which claim 36 depends. For example, provided in the rejection of claim 3, "flows may include VCCs and different classes (column 20, lines 1-9)." While applicant notes the cited column 21, lines 62-67, it should be understood in combination with that stated above. Therefore, the rejection is maintained.

While the Examiner additionally cites "flows may include VCCs and different classes (column 20, lines 1-9)," Applicant submits such teaching still does not teach or suggest, for example, "incrementing a pointer within a prioritization information table." Thus, Applicant submits claim 36 is in condition for allowance.

As Applicant stated in response to the previous Office action, regarding claim 36, Applicant submits the cited portions of the cited references fail to disclose or suggest the subject matter of claim 36. As an example, Applicant submits the cited portions of the cited references fail to disclose or suggest "when a first class of the plurality of classes does not have data to transmit during a particular interval for which it has priority, incrementing a pointer within a prioritization information table." While the Examiner cites "determined by referencing a flow table (column 21, lines 62-67)," Applicant submits the Examiner does not provide evidence as to how the Examiner apparently concludes such teaching purportedly discloses "i.e., class prioritization information." Thus, Applicant submits the Examiner has not made a *prima facie* showing of obviousness. Therefore, Applicant submits claim 36 is in condition for allowance.

Regarding claim 37, Applicant notes the Examiner states, in the Examiner's Response to Arguments, as follows:

Applicant's arguments, see page 20, paragraph 3, with respect to rejection of claim 37 under 35 USC 103, have been fully considered but they are not persuasive. Applicant states Examiner may not teach "wherein when a particular class has a priority, including a predetermined number of packets corresponding to that class in the data stream." Applicant's argument only recognizes Sorinsuo, column 10, lines 30-31, however the rejection was combination of Sorinsuo and Shimojo including detailed explanations and citations of the above noted limitations. Argument appears incomplete. Therefore, the rejections are maintained.

Applicant submits neither the purported teachings of the Sorinsuo reference or the purported teachings of the Shimojo reference, even if an attempt were made to combine such purported teachings, would disclose or suggest all of the features of claim 37. For example, Applicant submits neither of the purported teachings appears to disclose or suggest "...including a predetermined number of packets corresponding to that class in the data stream." Therefore, Applicant submits claim 37 is in condition for allowance.

As Applicant stated in response to the previous Office action, regarding claim 37, Applicant submits the cited portions of the cited references fail to disclose or suggest the subject matter of claim 37. As an example, Applicant submits the cited portions of the cited references fail to disclose or suggest "transmitting a number of packets during each interval of the intervals, wherein when a particular class has priority, including a predetermined number of packets corresponding to that class in the data stream." While the Examiner merely states "Sorinsuo teaches scheduling can support priorities (column 10, lines 30-31)," Applicant submits a mere mention of "priorities" does not teach or suggest "wherein when a particular class has priority, including a predetermined number of packets corresponding to that class in the data stream." Thus, Applicant submits the Examiner has not made a *prima facie* showing of obviousness. Therefore, Applicant submits claim 37 is in condition for allowance.

In conclusion, Applicant has overcome all of the Office's rejections, and early notice of allowance to this effect is earnestly solicited. If, for any reason, the Office is unable to allow the Application on the next Office Action, and believes a telephone interview would be helpful, the Examiner is respectfully requested to contact the undersigned attorney.

Respectfully submitted,

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Date



Ross D. Snyder, Reg. No. 37,730
Attorney for Applicant(s)
Ross D. Snyder & Associates, Inc.
PO Box 164075
Austin, Texas 78716-4075
(512) 347-9223 (phone)
(512) 347-9224 (fax)